

AMENDED IN ASSEMBLY SEPTEMBER 7, 2007

AMENDED IN ASSEMBLY JULY 5, 2007

**SENATE BILL**

**No. 929**

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**Introduced by Senator Cogdill**

February 23, 2007

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An act to amend ~~Section~~ Sections 515.5 and 1773.9 of the Labor Code, relating to ~~prevailing wages~~ employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 929, as amended, Cogdill. ~~Prevailing~~ Overtime compensation: prevailing wage determinations: ~~predetermined change~~.

*Existing law provides that 8 hours of labor constitutes a day's work. Under existing law, any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first 8 hours worked on the 7th day of work in any one workweek is required to be compensated at the rate of no less than 1 1/2 times the regular rate of pay for an employee. Existing law exempts a professional employee in the computer software field from this overtime compensation requirement if the employee is primarily engaged in work that is intellectual or creative, the employee's hourly rate of pay is not less than \$41, and the employee meets other requirements.*

*This bill would decrease the hourly rate of pay requirement for this exemption to not less than \$36.*

Existing law generally requires contractors and subcontractors performing work on public works, as defined, costing over \$1,000 to pay to their workers the general prevailing rate of per diem wages, including these wage rates for holiday and overtime work, in the locality in which the public work is performed. Existing law provides that per diem wages includes both hourly wage rates and employer payments

for employee benefits, as specified. Existing law requires the Director of Industrial Relations to determine per diem wages by referencing collective bargaining agreements, wage rates for federal public works, and, in certain instances, data from the labor organizations and employers associations, as specified. If the director determines that the general prevailing rate of per diem wages is the rate established by a collective bargaining agreement, and that collective bargaining agreement contains definite and predetermined changes during its term that will affect the rate adopted by the director, existing law requires the director to incorporate those changes into his or her prevailing wage determination.

This bill would authorize contractors and subcontractors, whenever the director's prevailing wage determination contains a predetermined change but does not specify how the change will be allocated between hourly wages and employer payments for benefits, to allocate payments equal to that change to either hourly wages or benefits for a specified time period, as provided. This bill would also provide that, if the allocation of a predetermined change is subsequently altered by the parties pursuant to the collective bargaining agreement that was the basis of the prevailing wage determination, a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change in accordance with either the originally published allocation or the allocation as altered in the collective bargaining agreement.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 515.5 of the Labor Code is amended to*  
2     *read:*  
3     515.5. (a) Except as provided in subdivision (b), an employee  
4     in the computer software field shall be exempt from the  
5     requirement that an overtime rate of compensation be paid pursuant  
6     to Section 510 if all of the following apply:  
7     (1) The employee is primarily engaged in work that is  
8     intellectual or creative and that requires the exercise of discretion  
9     and independent judgment.  
10    (2) The employee is primarily engaged in duties that consist of  
11    one or more of the following:

1 (A) The application of systems analysis techniques and  
2 procedures, including consulting with users, to determine hardware,  
3 software, or system functional specifications.

4 (B) The design, development, documentation, analysis, creation,  
5 testing, or modification of computer systems or programs, including  
6 prototypes, based on and related to user or system design  
7 specifications.

8 (C) The documentation, testing, creation, or modification of  
9 computer programs related to the design of software or hardware  
10 for computer operating systems.

11 (3) The employee is highly skilled and is proficient in the  
12 theoretical and practical application of highly specialized  
13 information to computer systems analysis, programming, and  
14 software engineering. A job title shall not be determinative of the  
15 applicability of this exemption.

16 (4) The employee's hourly rate of pay is not less than ~~forty-one~~  
17 *thirty-six* dollars ~~(\$41.00)~~ (\$36.00), or the annualized full-time  
18 salary equivalent of that rate, provided that all other requirements  
19 of this section are met and that in each workweek the employee  
20 receives not less than ~~forty-one~~ *thirty-six* dollars ~~(\$41.00)~~ (\$36.00)  
21 per hour worked. The Division of Labor Statistics and Research  
22 shall adjust this pay rate on October 1 of each year to be effective  
23 on January 1 of the following year by an amount equal to the  
24 percentage increase in the California Consumer Price Index for  
25 Urban Wage Earners and Clerical Workers.

26 (b) The exemption provided in subdivision (a) does not apply  
27 to an employee if any of the following apply:

28 (1) The employee is a trainee or employee in an entry-level  
29 position who is learning to become proficient in the theoretical  
30 and practical application of highly specialized information to  
31 computer systems analysis, programming, and software  
32 engineering.

33 (2) The employee is in a computer-related occupation but has  
34 not attained the level of skill and expertise necessary to work  
35 independently and without close supervision.

36 (3) The employee is engaged in the operation of computers or  
37 in the manufacture, repair, or maintenance of computer hardware  
38 and related equipment.

39 (4) The employee is an engineer, drafter, machinist, or other  
40 professional whose work is highly dependent upon or facilitated

1 by the use of computers and computer software programs and who  
2 is skilled in computer-aided design software, including CAD/CAM,  
3 but who is not in a computer systems analysis or programming  
4 occupation.

5 (5) The employee is a writer engaged in writing material,  
6 including box labels, product descriptions, documentation,  
7 promotional material, setup and installation instructions, and other  
8 similar written information, either for print or for onscreen media  
9 or who writes or provides content material intended to be read by  
10 customers, subscribers, or visitors to computer-related media such  
11 as the World Wide Web or CD-ROMs.

12 (6) The employee is engaged in any of the activities set forth  
13 in subdivision (a) for the purpose of creating imagery for effects  
14 used in the motion picture, television, or theatrical industry.

15 **SECTION 1.**

16 *SEC. 2.* Section 1773.9 of the Labor Code is amended to read:

17 1773.9. (a) The Director of Industrial Relations shall use the  
18 methodology set forth in subdivision (b) to determine the general  
19 prevailing rate of per diem wages in the locality in which the public  
20 work is to be performed.

21 (b) The general prevailing rate of per diem wages includes all  
22 of the following:

23 (1) The basic hourly wage rate being paid to a majority of  
24 workers engaged in the particular craft, classification, or type of  
25 work within the locality and in the nearest labor market area, if a  
26 majority of the workers is paid at a single rate. If no single rate is  
27 being paid to a majority of the workers, then the single rate being  
28 paid to the greatest number of workers, or modal rate, is prevailing.  
29 If a modal rate cannot be determined, then the director shall  
30 establish an alternative rate, consistent with the methodology for  
31 determining the modal rate, by considering the appropriate  
32 collective bargaining agreements, federal rates, rates in the nearest  
33 labor market area, or other data such as wage survey data.

34 (2) Other employer payments included in per diem wages  
35 pursuant to Section 1773.1 and as included as part of the total  
36 hourly wage rate from which the basic hourly wage rate was  
37 derived. In the event the total hourly wage rate does not include  
38 any employer payments, the director shall establish a prevailing  
39 employer payment rate by the same procedure set forth in  
40 paragraph (1).

1 (3) The rate for holiday and overtime work shall be those rates  
2 specified in the collective bargaining agreement when the basic  
3 hourly rate is based on a collective bargaining agreement rate. In  
4 the event the basic hourly rate is not based on a collective  
5 bargaining agreement, the rate for holidays and overtime work, if  
6 any, included with the prevailing basic hourly rate of pay shall be  
7 prevailing.

8 (c) (1) If the director determines that the general prevailing rate  
9 of per diem wages is the rate established by a collective bargaining  
10 agreement, and that the collective bargaining agreement contains  
11 definite and predetermined changes during its term that will affect  
12 the rate adopted, the director shall incorporate those changes into  
13 the determination. Predetermined changes that are rescinded prior  
14 to their effective date shall not be enforced.

15 (2) When the director determines that there is a definite and  
16 predetermined change in the general prevailing rate of per diem  
17 wages as described in paragraph (1), but has not published, at the  
18 time of the effective date of the predetermined change, the  
19 allocation of the predetermined change as between the basic hourly  
20 wage and other employer payments included in per diem wages  
21 pursuant to Section 1773.1, a contractor or subcontractor may  
22 allocate payments of not less than the amount of the definite and  
23 predetermined change to either the basic hourly wage or other  
24 employer payments included in per diem wages for up to 60 days  
25 following the director's publication of the specific allocation of  
26 the predetermined change.

27 (3) When the director determines that there is a definite and  
28 predetermined change in the general prevailing rate of per diem  
29 wages as described in paragraph (1), but the allocation of that  
30 predetermined change as between the basic hourly wage and other  
31 employer payments included in per diem wages pursuant to Section  
32 1773.1 is subsequently altered by the parties to a collective  
33 bargaining agreement described in paragraph (1), a contractor or  
34 subcontractor may allocate payments of not less than the amount  
35 of the definite and predetermined change in accordance with either  
36 the originally published allocation or the allocation as altered in  
37 the collective bargaining agreement.